

**REMARKS**

Applicants thank the examiner for the interview conducted on December 7, 2004. Although a final disposition of the application was not reached, applicant understands that the examiner agreed that Rando does not suggest the elements of claim 1 (see, e.g., the Interview Summary form).

By way of the office action dated October 8, 2004, claims 1-6 and 11-14 stand rejected under 35 U.S.C. §103(a) as being obvious over Rando, U.S. Patent No. 5,287,627. Claims 7-10 and 15-21 stand rejected under §103(a) as being obvious over Rando in view of Lindsey, U.S. Patent No. 5,983,514.

**Claim 1 is Not Obvious Over Rando.**

Claim 1 recites, in part, a housing, a retractable tape disposed within the housing, and a waveform range finder disposed within the housing.

Rando provides no suggestion that both a tape and a range finder should be disposed in a housing. Instead, Rando suggests that either a tape measure can be disposed in a housing with a laser or a range finder can be disposed in a housing with a laser.

In Rando, the "invention" is taught to be a tilt compensation mechanism for a laser. See, e.g., column 4, lines 64-68 ("It is therefore a primary object of the present invention to provide a simple, very compact and easily used hand tool for projecting a plumb or horizontal laser beam, or a pointing laser beam, with substantially true vertical and horizontal orientations."); see also column 11, lines 28-37 (stating that a device in accordance with the present invention produces a beam and includes a tilt compensation assembly).

In column 11, lines 38-40, Rando discloses that the invention -- the laser assembly with tilt compensation means-- can be used with a tape measure, and points to Figs. 13-15. In column 12, lines 58-62, Rando teaches that the invention can be used with other, i.e. different, tools such as an acoustic distance measuring device. Thus, Rando teaches that the laser with tilt compensation can be used with either a tape measure or an acoustic distance measuring device. Rando does not suggest that an acoustic distance measuring device can be made integral with a tape measure. Accordingly, the claim set is allowable for this reason alone.

Secondary Considerations Show that the Subject Matter of Claim 1 is Non-Obvious.

While there is no suggestion within any of the cited references for the subject matter recited in claim 1, applicant submits herewith an affidavit of the inventor with Exhibits A and B under 37 C.F.R. §1.132. This affidavit provides further evidence of non-obviousness of the claimed subject matter in the form of a license taken by an industry leader. This affidavit must be considered by the examiner in determining the issue of obviousness. MPEP §716.01(a).

The affidavit outlines the commercial success of the subject matter recited in claim 1 and shows a nexus between the claimed subject matter and the commercial success. The subject matter of the license is commensurate with the claimed subject matter, i.e. both are directed to a sonic measuring device with a tape measure. Further, the commercial success is directly derived from the invention claimed. Because the applicant is a sole inventor, there is no heavy promotion or consumption by purchasers normally tied to the applicant.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance. No fee is believed due at this time. However, if any fee is due, please charge our Deposit Account No. 13-2855, under Order No. 30650/39706 from which the undersigned is authorized to draw.

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Respectfully submitted,

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